

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Sudeen G. Kelly.

Entergy Services, Inc.

Docket Nos. ER03-1140-001  
ER03-1140-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued February 17, 2004)

1. In this order the Commission denies Entergy's request for rehearing and grants clarification of its order issued on September 29, 2003, Entergy Services, Inc., 104 FERC ¶ 61,329 (2003) (September 29 Order), in which the Commission accepted, subject to modification, revisions to Entergy Services, Inc.'s (Entergy) (on behalf of the Entergy Operating Companies<sup>1</sup>) creditworthiness provisions (section 11) and other related provisions of Entergy's Open Access Transmission Tariff (OATT). The Commission also conditionally accepts the revisions made by Entergy to its OATT in its compliance filing, subject to modification and clarification.<sup>2</sup> This order benefits customers by allowing Entergy to decrease the potential financial risk associated with uncreditworthy customers to both Entergy and its creditworthy customers, without unduly burdening uncreditworthy customers.

**I. Background**

2. On July 31, 2003, as modified in an answer submitted on September 5, 2003, Entergy filed to amend its OATT to adopt more stringent creditworthiness standards in

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<sup>1</sup> The Entergy Operating Companies are Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

<sup>2</sup> See Appendix for a list of the tariff sheets.

order to decrease its potential financial exposure to transmission customers with poor credit ratings. Entergy stated that modifying the creditworthiness standards allows the company to gain more control over its credit risk. Entergy stressed that the proposed standards balance the company's need for financial protection against non-payment with concerns about imposing commercially unreasonable burdens on its transmission customers.

3. In the September 29 Order, the Commission accepted Entergy's proposed creditworthiness requirements, but required modifications to make the provisions consistent with the findings in Carolina Power & Light Co., et al.<sup>3</sup> The Commission rejected Entergy's proposed D&B Composite Credit Appraisal of "Good" or better for customers without credit ratings, instead relying on Carolina Power's institution of a one (1) year history of taking transmission service by customers coupled with the provision of financial statements meeting standards underlying Moody's or Standard & Poor's assessments. For rural electric cooperatives, municipal entities and state agencies without credit ratings, the Commission directed Entergy to adopt a one year of service requirement, consistent with Carolina Power, but also accepted Entergy's proof of obligation standard negotiated with state and municipal entities.<sup>4</sup> The Commission directed Entergy to institute a prepayment option, as in Carolina Power, for those customers seeking service for periods greater than as well as less than one month, thereby avoiding the need to post financial assurances. The Commission also directed Entergy to add a provision to its suspension of service section 11.4 to provide that transmission customers are not obligated to pay for suspended service.

**A. Entergy's Compliance Filing and Request for Rehearing**

4. On October 29, 2003, Entergy filed a compliance filing in response to the Commission's September 29 Order. Concurrently, Entergy filed a request for clarification, or in the alternative, request for rehearing regarding the following:

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<sup>3</sup> 103 FERC ¶ 61,159 (2003), Order Denying Rehearing 106 FERC ¶ 61,141 (2004) (Carolina Power).

<sup>4</sup> Entergy revised section 11.2(iv) of its filing to state that municipal, state, and rural electric cooperatives without Rural Utility Service (RUS) debt would be deemed creditworthy if they provide documentation that their respective state or municipal organic statutes require them first to devote their revenues to the payment of their operating and maintenance expenses (and the principal and interest on outstanding obligations) before all other obligations.

(1) clarification of the scope of credit reviews that Entergy must perform for customers without Standard & Poor's or Moody's credit ratings (or rehearing of the Commission's decision to reject Dun & Bradstreet (D&B) credit appraisal standards); (2) clarification of the degree of consistency required by the Commission between the Carolina Power creditworthiness procedures and Entergy's creditworthiness procedures as it pertains to prepayment (or rehearing if the Commission determines the provisions must be identical); (3) clarification of Entergy's ability to release temporarily suspended capacity (or rehearing of the Commission's requirement to inoculate suspended customers from payment); and, (4) clarification that Entergy may retain its criteria for full faith and credit backing by local and state governments for municipalities, rural electric cooperatives without RUS debt, and state agencies that otherwise would be deemed creditworthy uniquely by virtue of their having taken transmission service for one year (or rehearing of the one-year of service criteria).

## **II. Discussion**

5. The Commission has addressed creditworthiness standards in revisions to section 11 of the pro forma OATT in filings made by several public utilities. While the findings in Carolina Power are instructive, the Commission has not imposed the requirements of that order inflexibly upon other utilities. We will accept Entergy's compliance filing that adopts many of the provisions approved in Carolina Power as consistent with or superior to the pro forma OATT,<sup>5</sup> subject to modifications that reflect the individual circumstances associated with Entergy.

### **A. Determination of Creditworthiness**

6. In section 11.2, Entergy provides its criteria for creditworthiness under the Entergy OATT.

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<sup>5</sup> Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888 FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997) order on reh'g, Order No. 888-C, 83 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York, et al. v. FERC, 535 U.S. 1 (2002).

**1. Criteria for unrated customers**

**Entergy Filings**

7. On rehearing and in its compliance filing, Entergy requests clarification of what the Commission considers “commercially reasonable” information for purposes of credit review of a customer’s finances for equivalency with the standards underlying Moody’s and Standard & Poor’s ratings. In the October 29 compliance filing, Entergy submitted a list of determinants from publicly available information that it would use to analyze the creditworthiness of a customer.<sup>6</sup> Entergy states that should the Commission find this list unacceptable, then the revisions it filed in section 11.2(vi) concerning equivalency are made under protest and it seeks rehearing of the Commission’s decision to reject its D&B proposal in section 11.2.1.

**Commission Determination**

8. The Commission finds that the proposed list of reviewable items put forth by Entergy for purposes of determining a customer’s creditworthiness and the equivalency of the customer’s financials with those supporting ratings by Standard & Poor’s and Moody’s is acceptable. The Commission has accepted similar criteria in gas proceedings on creditworthiness standards.<sup>7</sup> The Commission therefore denies rehearing of the D&B Credit Appraisal standard rejected in the September 29 Order.

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<sup>6</sup> Based on similar lists included in Tennessee Gas Pipeline Co., 103 FERC ¶ 61,275, order on reh’g, 105 FERC 61,120 (2003) (Tennessee Gas) and Gulf South Pipeline Co., LP, 103 FERC ¶ 61,129 (2003) reh’g pending (Gulf South) regarding creditworthiness, Entergy believes that it can consider the following criteria to determine whether a customer is “investment grade:” business start date, present ownership and line of business, customer’s overall credit ratings, financial stress or credit score assigned by public sources, and the provision of sworn or audited information allowing Entergy to evaluate a customer’s current ratio, quick ratio, return on sales/net margin, return on net worth/return on equity and total liabilities/net worth for comparison to other companies in the same industry. Entergy also intends to review the public record for reported suits, liens, judgments and UCC filings to determine if a customer is operating under any chapter of the bankruptcy laws and/or is subject to liquidation or debt reduction procedures under state laws. Entergy Compliance Filing Letter at 3-4.

<sup>7</sup> Tennessee Gas, 103 FERC ¶ 61,275 (2003); Gulf South, 103 FERC ¶ 61,129 (2003).

## **2. State Agencies, Municipal Entities, and Rural Cooperatives**

### **Entergy Filings**

9. At the Commission's direction, Entergy included language in section 11.2(iv) stating that a municipal entity, state agency or rural cooperative (without RUS debt) may be considered creditworthy if it has taken service from Entergy for one year. In this provision, Entergy retained an additional requirement that such entities provide documentation that their obligations are backed by the full faith and credit of the municipality or state in which they are established. In the alternative, pursuant to 11.2(iv)(b), such entities need only provide documentation that their respective state or municipal organic statutes require them first to devote their revenues to the payment of their operating and maintenance expenses (and the principal and interest on outstanding obligations) before all other obligations.

10. Entergy requests clarification that the one-year provision was not meant as an addition to the statutory obligation provision that was agreed to by the parties. Moreover, citing Northern Natural Gas Co.,<sup>8</sup> Entergy states that payment history alone is not dispositive of financial health. Entergy therefore seeks clarification that the full faith and credit language should be allowed to remain in the OATT. To the extent the Commission requires Entergy to revise the section to allow customers to establish creditworthiness solely on the basis of payment history, Entergy seeks rehearing of that requirement.

### **Commission Determination**

11. The Commission agrees that a transmission provider retains the discretion to require demonstrations beyond those represented by a customer's payment history to assure itself of a customer's creditworthiness. Therefore, requiring municipal and state OATT customers to provide documentation that their financial obligations are backed by the full faith and credit of the municipality or state in which they operate is acceptable. However, such a requirement cannot apply to entities such as rural electric cooperatives without RUS debt that are customer-owned and therefore do not have a government-backed guarantee.

12. The Commission directs Entergy to make a compliance filing within 30 days of the date of this order to revise section 11.2(iv) to eliminate rural electric cooperatives

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<sup>8</sup> 102 FERC ¶ 61,076, reh'g denied, 103 FERC ¶ 61,276 (2003) (Northern Natural) (Shipper's payment history may not be indicative of its overall financial health.)

without RUS debt from the full faith and credit requirement. The Commission also denies Entergy's request for rehearing regarding elimination of the full faith and credit requirement in 11.2(iv) as it relates to such rural electric cooperatives, but recognizes Entergy's ability to seek additional factors, aside from a customer's payment history, that may be indicative of creditworthiness.

**B. Prepayment**

**Entergy's Filings**

13. As required by the September 29 Order, Entergy's compliance filing includes language establishing a prepayment system as an alternative to requiring a letter of credit from uncreditworthy customers, in much the same manner as that required by the Commission in Carolina Power. Entergy highlighted two deviations from Carolina Power, providing that: (1) for requests with a term greater than one month, a customer is required to prepay the first month at the time of the reservation and no later than five business days before the commencement of service;<sup>9</sup> and (2) in the instance where an applicant seeks transmission service for a period of one month or less, Entergy would require prepayment when it makes the request and no later than five days prior to the commencement of service,<sup>10</sup> as the company cannot process and verify payment in a shorter period of time. Entergy states that these proposed prepayment procedures are manageable for Entergy, and are consistent with those required in Carolina Power. Should the Commission find that the procedures must be identical to those of Carolina Power, then Entergy seeks rehearing of the requirement.

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<sup>9</sup> Entergy states that requiring prepayment at the time of the reservation will prevent a customer from reserving service months in advance and then renegeing on the commitment by failing to make the initial prepayment. Entergy Compliance Filing Letter at 6.

<sup>10</sup> In Carolina Power, the approved Tariff provided that "the Transmission Customer shall pay the total charge for service by the later of five business days prior to commencement of service or the time when it makes the request for transmission service;..." Carolina Power & Light Company Tariff, Third Revised Volume No. 3, Third Revised Sheet No. 34.

**Commission Determination**

14. We will not require Entergy's filing to mirror Carolina Power in this instance, and accept Entergy's proposal for prepayment of one month's charges at the time of the initial reservation for terms longer than one month, and, for service of one month or less, prepayment when it makes a request and no later than five days prior to the commencement of transmission service.

**C. Reserved Capacity**

**Entergy Filings**

15. Entergy seeks clarification from the Commission that Entergy may temporarily release reserved capacity in the circumstance where service to the customer holding a reservation has been suspended. Entergy maintains that allowing a suspended customer to forego payments but not allowing the release of the suspended customer's capacity does not permit Entergy to mitigate losses or to prevent unused capacity from being lost or wasted. Entergy maintains that it should be allowed to resell the capacity. Moreover, Entergy states that it can only guarantee reinstatement of transmission service upon receipt of required financial assurances from the suspended customer, if the capacity has not been purchased by another customer.

**Commission Determination**

16. While it is the Commission's view that Entergy was never precluded from releasing this capacity in the event of a suspension, we will nevertheless clarify that Entergy does have the ability to release reserved capacity. As this Commission stated in Gulf South, a pipeline has the ability to sell a suspended shipper's service to others.<sup>11</sup> We therefore accord this same option Entergy.

**The Commission orders:**

(A) Entergy's request for clarification is hereby granted, and its request for rehearing denied, as discussed in the body of this order.

(B) Entergy's revised tariff sheets to its Open Access Transmission Tariff is hereby conditionally accepted, subject to the modifications discussed in the body of this order.

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<sup>11</sup> Gulf South, 103 FERC ¶ 61,129 (2003).

(C) Entergy is hereby directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

## APPENDIX

Entergy Services, Inc.

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Substitute First Revised Sheet No. 4  
Substitute First Revised Sheet No. 5  
Substitute First Revised Sheet No. 6  
Substitute First Revised Sheet No. 7  
Substitute First Revised Sheet No. 8  
Substitute First Revised Sheet No. 9  
-Substitute First Revised Sheet No. 10  
Substitute Second Revised Sheet No. 11  
Substitute First Revised Sheet No. 36  
Substitute Original Sheet No. 36A  
Substitute Original Sheet No. 36B  
Substitute Original Sheet No. 36C  
Substitute Original Sheet No. 36D  
Substitute Original Sheet No. 36E  
Substitute Original Sheet No. 36F  
Substitute Original Sheet No. 36G  
Substitute Original Sheet No. 36H  
Substitute Original Sheet No. 36I  
Substitute Original Sheet No. 36J  
Original Sheet No. 36K  
Original Sheet No. 36L  
Substitute First Revised Sheet No. 37  
Substitute First Revised Sheet No. 62  
Substitute First Revised Sheet No. 67  
Substitute Second Revised Sheet No. 92  
Substitute Second Revised Sheet No. 92A  
Substitute First Revised Sheet No. 158  
Substitute First Revised Sheet No. 162  
Substitute First Revised Sheet No. 181.